

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAURENCIO MARTINEZ QUINTERO,
Petitioner,
v.
TAMMY FOSS,
Respondent.

No. 2:20-cv-00200-TLN-CKD

ORDER

Petitioner Laurencio Martinez Quintero (“Petitioner”), a state prisoner proceeding *pro se*, has filed this Application for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 29, 2020, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. (ECF No. 28.) On February 16, 2021, Petitioner timely filed Objections to the Findings and Recommendations.¹ (ECF No. 31.)

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¹ Plaintiff requested and was granted a 60-day extension of time to file objections. (ECF Nos. 29, 30.)

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304(f), this
2 Court has conducted a *de novo* review of this case. *See also McDonnell Douglas Corp. v.*
3 *Commodore Business Machines*, 656 F.2d 1309, 1313 (9th Cir. 1981), *cert. denied*, 455 U.S. 920
4 (1982). Having reviewed the file under the applicable legal standards, the Court finds the
5 Findings and Recommendations to be supported by the record and by the magistrate judge's
6 analysis.

7 Pursuant to Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the Court has
8 considered whether to issue a certificate of appealability. Before Petitioner can appeal this
9 decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).
10 Where the petition is denied on the merits, a certificate of appealability may issue under 28
11 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a
12 constitutional right.” 28 U.S.C. § 2253(c)(2). The Court must either issue a certificate of
13 appealability indicating which issues satisfy the required showing or must state the reasons why
14 such a certificate should not issue. *See* Fed. R. App. P. 22(b). Where the petition is dismissed on
15 procedural grounds, a certificate of appealability “should issue if the prisoner can show: (1) ‘that
16 jurists of reason would find it debatable whether the district court was correct in its procedural
17 ruling’; and (2) ‘that jurists of reason would find it debatable whether the petition states a valid
18 claim of the denial of a constitutional right.’” *Morris v. Woodford*, 229 F.3d 775, 780 (9th Cir.
19 2000) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484–85 (2000)). For the reasons set forth in the
20 Findings and Recommendations (ECF No. 28), the Court finds that issuance of a certificate of
21 appealability is not warranted in this case.

22 Accordingly, IT IS HEREBY ORDERED that:

23 1. The Findings and Recommendations filed December 29, 2020 (ECF No. 28), are
24 ADOPTED IN FULL; and

25 2. Claims 7–13 in Petitioner's Second Amended Petition for Writ of Habeas Corpus are
26 summarily DISMISSED;

27 3. With respect to Claim 6, Petitioner's Motion for a Stay pursuant to *Rhines v. Weber*,
28 544 U.S. 269, 278 (2005), is DENIED (ECF No. 22);

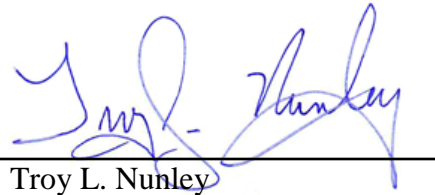
1 4. Petitioner's Second Amended Petition for a Writ of Habeas Corpus is DISMISSED as
2 a mixed petition containing both exhausted and unexhausted claims; and

3 5. This case is remanded to the magistrate judge for further proceedings as to Claims 1–5
4 in the Second Amended Petition.

5 IT IS SO ORDERED.

6 DATED: March 19, 2021

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Troy L. Nunley
United States District Judge